IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

MACA.No. 26 of 2003()

OPMV.2035/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/2ND RESPONDENT

THE NEW INDIA ASSURANCE CO.LTD.,
KOCHI-15, REPRESENTED BY ITS
ASST.ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
KANDOMKULATHY TOWERS, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS: 1ST RESPONDENT & PETITIONER
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1. KRISHNAKUMAR, CHERUVALLIL HOUSE,
EDAYAKUNNAM, SOUTH CHITTOOR P.O.

2. ELSY, KACHIPILLY HOUSE,
VALIYAPALLAMETHURUTHU, PARAVOOR.

R1 BY ADV. SRI.R.DIVAKARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

M.A.C.A.NO. 26 OF 2003 B

Dated this the 18th day of December,2006

JUDGMENT

The second respondent herein filed O.P.(MV) No.2035 of 1996, on the file of the Motor Accidents Claims Tribunal, Ernakulam, claiming compensation in respect of an accident which occurred on 30.3.1996. On the date of the accident, when the claimant was walking along the side of the road, the motor bike driven by the first respondent hit against her and she sustained injuries. The Tribunal held that the claimant is entitled to get a compensation of Rs.14,000/- with interest at 9% per annum from 16.7.1996. The appellant herein, being the insurer was directed to produce cheque for the amount in Court within one month.

2. Admittedly, the appellant is the insurer. The appellant raised a contention before the

Tribunal that the first respondent herein was not having a valid driving licence at the time when the accident took place. The Tribunal found that the first respondent had no valid driving licence during the relevant time. The contention of the appellant is that in spite of that finding the insurance company was made liable to pay the compensation amount.

3. As held in **National Insurance Company Limited** v. **Swaran Singh & others** (2004 (1) KLT 781 (SC)), mere absence of driving licence or disqualification of the driver is not a defence available to the insurer against either the insured or third parties. The Supreme Court held that the insurance company is liable to satisfy the award in favour of the third party at the first instance and then to recover the award amount from the insured in cases where there is a breach of terms of the policy. In the case on hand, the first respondent

was not having a valid driving licence at the time when the accident took place and, therefore, the insurance company is entitled to realise the compensation amount paid by it to the claimant, from the first respondent.

Accordingly, the M.A.C.A is allowed and the award passed by the Tribunal is modified to the extent that on payment of the compensation amount by the insurance company, the appellant insurance company would be entitled to realise the amount from the insured, namely, the first respondent.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.A.C.A.NO. 26 OF 2003

JUDGMENT

18th December, 2006